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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 120814337-3488-02]

RIN 0648-BC44

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act of 1950 to implement Resolution C-12-09 of the Inter-American Tropical Tuna Commission (IATTC) by establishing limits on commercial retention of Pacific bluefin tuna by U.S. fishing vessels operating in the Eastern Pacific Ocean (EPO) in 2013. This action is necessary for the United States to satisfy its obligations as a member of the IATTC and to limit fishing on the stock.

DATES: This rule becomes effective [Insert date 30 days after date of publication in the FEDERAL REGISTER] through December 31, 2013.

ADDRESSES: Copies of the proposed and final rules, the Environmental Assessment, the Finding of No Significant Impact, and the Regulatory Impact Review for this action are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>, and are also available from the Regional Administrator, Rodney R. McInnis, NMFS Southwest Regional Office, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this

final rule may be submitted to NMFS Southwest Regional Office and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, NMFS SWR, 562-980-4039.

SUPPLEMENTARY INFORMATION:

On December 12, 2012, NMFS published a proposed rule in the Federal Register (76 FR 560790) to implement Resolution C-12-09 of the IATTC by revising regulations at 50 CFR part 300, subpart C. The proposed rule was open to public comment through January 11, 2012. In addition, a public hearing was held in Long Beach, CA on January 11, 2012.

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. The full text of the 1949 Convention is available at:

http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf. The Antigua Convention, which was negotiated to strengthen and replace the 1949 Convention establishing the IATTC, entered into force in 2010. The United States has not yet ratified the Antigua Convention. The IATTC serves as an international arrangement to ensure for conservation and management of highly migratory species of fish in the Convention Area (defined as the waters of the EPO). Since 1998, conservation resolutions adopted by the IATTC have further defined the Convention Area as the area bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years, and regularly assesses the status of tuna and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to prevent overexploitation of these stocks and to promote sustainable fisheries. Current IATTC membership includes: Belize,

Canada, China, Chinese Taipei (Taiwan), Colombia, Costa Rica, Ecuador, El Salvador, the European Union, France, Guatemala, Japan, Kiribati, the Republic of Korea, Mexico, Nicaragua, Panama, Peru, the United States, Vanuatu, and Venezuela. Bolivia and the Cook Islands are cooperating non-members.

International Obligations of the United States under the Convention

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement resolutions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951-962) directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate such regulations as may be necessary to implement resolutions adopted by the IATTC. The authority to promulgate such regulations has been delegated to NMFS.

IATTC Resolutions in 2012

At its 83rd Meeting, in June 2012, the IATTC adopted Resolution C-12-09, Conservation and Management Measures for Bluefin Tuna in the EPO. All active resolutions and recommendations of the IATTC are available on the following website:

<http://iattc.org/ResolutionsActiveENG.htm>.

The main objective of Resolution C-12-09 is to conserve Pacific bluefin tuna (Thunnus orientalis) by establishing limits on the commercial catches of Pacific bluefin tuna in the EPO. Before Resolution C-12-09, the IATTC had not adopted catch limits for Pacific bluefin tuna in the EPO. The IATTC recognizes the need to reduce fishing mortality of Pacific bluefin tuna throughout its range. Accordingly, Resolution C-12-09 included both a cumulative catch limit of 10,000 metric tons for all commercial fishing vessels of all IATTC member countries and cooperating non-member countries (CPCs) fishing in the EPO for 2012 and 2013 combined, and an annual catch limit of 500 metric tons for each CPC with a historical record of Eastern Pacific

bluefin catch to allow these nations some opportunity to catch Pacific bluefin tuna if the cumulative limit is reached. The IATTC emphasizes that the measures in Resolution C-12-09 are intended as an interim means for assuring viability of the Pacific bluefin tuna resource. Future conservation measures are expected to be based in part on information and advice from the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean and the IATTC scientific staff.

While Pacific bluefin tuna catch by U.S. vessels fishing in the EPO exceeded 1,000 metric tons as recently as the early 1990's, catches have remained below 500 metric tons for more than a decade. Table 1 below shows the U.S. commercial catch of Pacific bluefin tuna for the years 1999 to 2012 in the EPO. The Pacific bluefin tuna catch by U.S. vessels fishing in the EPO have been greater than those from the WCPO. However, the average annual Pacific bluefin tuna landings (i.e., records of catch) by U.S. vessels fishing in the EPO from 2007 through 2011 represent only two percent of the average annual landings from all fleets fishing in the EPO during that time (for information on Pacific bluefin tuna harvests in the EPO, see:

http://isc.ac.affrc.go.jp/pdf/ISC12pdf/ISC12_Plenary_Report-FINAL.pdf).

Table 1: U. S. Commercial Catch of Pacific Bluefin Tuna in the EPO (in metric tons)

Year	Pacific Bluefin Tuna Catch (in metric tons)
1999	186
2000	313
2001	196
2002	11
2003	36
2004	10
2005	207
2006	1
2007	45
2008	1
2009	415

2010	1
2011	118
2012	*42

Source: Highly Migratory Species Stock Assessment and Fishery Evaluation:

<http://www.pcouncil.org/highly-migratory-species/stock-assessment-and-fishery-evaluation-safe-documents/current-hms-safe-document/>

*Preliminary PacFIN estimate of 2012 Pacific bluefin tuna landings by U.S., extracted February 22, 2013.

In 2010, the Western and Central Pacific Fisheries Commission (WCPFC) adopted conservation and management measures for Pacific bluefin tuna to ensure that the current level of fishing mortality is not increased. Resolution C-12-09 complements the action taken by the WCPFC in 2010 that set effort controls in the western central Pacific Ocean. In 2011, NMFS determined overfishing is occurring on Pacific bluefin tuna (76 FR 28422, May 17, 2011). Based on a 2013 stock assessment, NMFS determined Pacific bluefin tuna was not only experiencing overfishing but was also overfished. The combination of Resolution C-12-09 and the WCPFC effort controls are positive steps towards the conservation of Pacific bluefin tuna across the range of this resource.

Tuna Conservation Measures for 2012-2013

Under authority of the Tuna Conventions Act, NMFS is implementing Resolution C-12-09, which has been approved by an authorized official acting for the Secretary of State. In accordance with the 10,000 metric ton cumulative catch limit adopted in Resolution C-12-09 for both 2012 and 2013 combined, the cumulative catch limit for all CPCs for 2013 is 3,295 metric tons, because the cumulative catch of all CPCs in the Convention Area reached 6,705 metric tons in 2012. Therefore, targeting and retention of Pacific bluefin tuna by all U.S. commercial fishing vessels in the EPO shall be prohibited for the remainder of 2013 when the cumulative catch by

all CPCs reaches 3,295 metric tons of Pacific bluefin tuna, and when the commercial catch of Pacific bluefin tuna by the U.S. fleet has reached or exceeded 500 metric tons in 2013. If the U.S. commercial fishing fleet has not caught 500 metric tons of Pacific bluefin tuna in 2013 when the cumulative catch limit for all CPCs is reached, then the U.S. commercial fishing fleet may continue to target and retain Pacific bluefin tuna until the 500 metric ton limit is reached. The U.S. commercial fishing fleet may retain more than the 500 metric tons of Pacific bluefin tuna in 2013 unless and until the international fleet reaches the limit of 3,295 metric tons.

Announcement of the Limit Being Reached

To help ensure that the total catch of Pacific bluefin tuna in the EPO does not exceed the catch limit for each year, NMFS will report U.S. catch to the IATTC Director on a monthly basis. The IATTC Director will inform CPCs when the total annual catch limit is reached. If NMFS determines, based on the information provided by the IATTC Director, that the applicable limit is imminent, NMFS will publish a notice in the Federal Register announcing that restrictions will be effective on specific future dates until the end of the calendar year. This notice will specify a date and time for when targeting of Pacific bluefin tuna will be prohibited in the EPO, and a date and time when retention of Pacific bluefin tuna will be prohibited in the EPO. The effective date for the retention prohibition will follow the effective date for the targeting prohibition, to allow sufficient time for U.S. commercial fishing vessels retaining lawfully caught Pacific bluefin tuna to exit the EPO.

NMFS will make estimates and/or projections of U.S. catch of Pacific bluefin tuna from the EPO publicly available on a quarterly basis, on the NMFS Southwest Regional Office webpage. Additionally, NMFS will continue to investigate other means of reporting preliminary Pacific bluefin tuna catch between quarterly intervals to help participants of the commercial

fishery plan for the possibility of the catch limit being reached. This commercial catch limitation will remain in effect through 2013, unless the IATTC decides to remove or modify the measure in 2013. NMFS anticipates controls on fishing for Pacific bluefin tuna in the EPO to be included in future resolutions by the IATTC.

Response to Public Comments

NMFS received four written public comments during the proposed rule public comment period. Additionally, six individuals participated in the public hearing. Two individuals who submitted written comments also attended the public hearing. In total, eight commenters submitted comments to NMFS. Four commenters suggested further restricting the Pacific bluefin fishery beyond the scope of this action based on concerns that the action did not sufficiently advance conservation of the resource. Four commenters noted that U.S. catch is insignificant relative to other sources of Pacific bluefin mortality. In addition, the Department of the Interior, Office of Environmental Policy and Compliance, Pacific Southwest Region, noted that they reviewed the subject action, but did not have comments. Summaries of the comments received and NMFS' responses appear below.

Comment 1: The proposed rule is not consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) because it neither prevents overfishing by addressing the relative impacts of the U.S. fleet nor is it based on the best available information regarding the status of Pacific bluefin tuna.

Response: NMFS is promulgating this rule in accordance with IATTC Resolution C-12-09 and under the authority of the Tuna Conventions Act. This action is not subject to the Magnuson-Stevens Act. During its June 2012 meeting, the IATTC adopted Resolution C-12-09 based on the best information on the stock status of Pacific bluefin available at that time: the

IATTC scientific staff recommendations, recommendations from the IATTC's Scientific Advisory Committee, the 2008 stock assessment for Pacific bluefin tuna (finding the stock subject to overfishing) by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific (ISC), and Pacific bluefin management measures adopted in December 2010 by the Western and Central Pacific Fisheries Commission. Following the adoption of Resolution C-12-09 and the publication of the proposed rule, the ISC completed another stock assessment for Pacific bluefin tuna which served as the basis for NMFS' recent determination that the stock is experiencing overfishing and is overfished. In April 2013, NMFS informed the Pacific and the Western Pacific Fishery Management Councils of this determination and their obligations under section 304(i) of the Magnuson-Stevens Act.

Comment 2: Pacific bluefin tuna catch by U.S. vessels fishing in the EPO is an insignificant source of mortality relative to international catch levels. Despite the low numbers of landings in recent years, the United States can and has caught more than 500 metric tons of Pacific bluefin tuna in years when the fish and fishing opportunity were available.

Response: NMFS notes that the average annual Pacific bluefin tuna landings by U.S. vessels fishing in the EPO represent roughly two percent of the average annual landings from all fleets fishing in the EPO for years 2007 through 2011 (see section 1.5 of the Environmental Assessment). However, annual U.S. landings in the 1980s and 1990s often exceeded 1,000 metric tons. NMFS acknowledges that the U.S. fleet has the capacity to catch more than 500 metric tons of Pacific bluefin tuna, even though it is unlikely that the U.S. fleet would catch more than 500 metric tons. Therefore, it is in the interest of the United States to implement catch limits to both contribute to the sustainability of the stock and fulfill its obligations as a Contracting Party to the Convention.

Comment 3: The supplementary information provided in the proposed rule should have included landings by U.S. vessels fishing in the EPO for years 2010, 2011, 2012. Additionally, more clarity should be provided on how catches will be publicly reported.

Response: In the supplementary information section of this final rule, Table 1 (U.S. Commercial Catch of Pacific bluefin tuna in the EPO) has been updated to include landings for years 2010, 2011, and 2012. NMFS will make estimates or projections of Pacific bluefin tuna catch publicly available on a quarterly basis. There is a time lag between the collection of this data by state management entities and its submission to the Pacific Fisheries Information Network database. Furthermore, because so few U.S. vessels actively participate in the Pacific bluefin tuna fishery, it is unlikely that NMFS will be able to report catch on a weekly or monthly basis, due to confidentiality concerns. However, NMFS will continue to explore other means of reporting preliminary Pacific bluefin tuna catch more often than quarterly to help fishermen plan for the possibility that the catch limit will be reached.

Changes from the Proposed Rule

NMFS made a few adjustments to the language of the regulatory text from the proposed rule. Because the final rule is being published in 2013, NMFS removed references to restrictions applicable in 2012. As described above, NMFS adjusted the cumulative catch limit from 10,000 metric tons to 3,295 metric tons of Pacific bluefin tuna for all CPCs to reflect the cumulative limit for 2013. Additionally, the regulatory text now references “dates” rather than “date,” because NMFS will publish a notice in the Federal Register announcing that restrictions will be effective on a specific future date and time for the targeting prohibition and a later effective date and time for the retention prohibition to allow sufficient time for U.S. commercial fishing vessels retaining lawfully caught Pacific bluefin tuna to exit the EPO. Furthermore, the regulatory text

now clarifies that the international limit applies to harvests by cooperating non-members of the IATTC, as well as member countries.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act and other applicable laws. This final rule has been determined to be not significant for purposes of Executive Order 12866. The following paragraphs summarize the regulatory flexibility analysis. NMFS did not receive any comments on the summary of the initial regulatory flexibility analysis that was published with the proposed rule.

The main objective of this rule is to establish catch limits to contribute to the conservation of the Pacific bluefin tuna stock. This rule applies to owners and operators of U.S. commercial fishing vessels that catch Pacific bluefin tuna in the IATTC Convention Area. It is important to note that no U.S. commercial vessels specialize in harvesting Pacific bluefin tuna in the EPO.

This rule does not mandate “reporting” or “recordkeeping.” As for compliance, in the unlikely event that the limit on Pacific bluefin tuna catch is reached for 2013, it will be the responsibility of the vessel owner to ensure that no further targeting of Pacific bluefin tuna occurs, and that no more Pacific bluefin tuna are retained on board after the specified dates published in the Federal Register notice announcing that the annual limit is expected to be reached. In the unlikely event of a closure under this rule, the cost of compliance would be de minimis. Compliance costs could consist of returning incidentally caught bluefin tuna to the ocean, forgoing associated profits, and potentially losing fishing opportunity if bluefin availability to the U.S. fleet increased in 2013. However, the U.S. fleet would have to catch more bluefin tuna in 2013 than they have caught in any given year in the past decade before they

would incur any compliance costs associated with a fishery closure resulting from this action. NMFS will publish a notice in the Federal Register announcing that restrictions will be effective from the dates specified through the end of the calendar year. NMFS will take reasonable actions to inform vessel owners if a closure of the Pacific bluefin tuna fishery appears imminent.

Pacific bluefin tuna is commercially caught by U.S. vessels fishing in the EPO on an irregular basis. Most of the landings are made by small coastal purse seine vessels operating in the Southern California Bight with limited additional landings made by the drift gillnet fleet that targets swordfish and thresher shark. Lesser amounts of Pacific bluefin are caught by gillnet and longline gear. The Pacific bluefin tuna commercial catch limitations are not expected to result in closing the U.S. Pacific bluefin tuna fishery because annual catches have not reached 500 metric tons in over a decade. The average annual United States catch of Pacific bluefin tuna was 113 metric tons for 1999 through 2012. Table 1 (above) describes U.S. commercial catch of bluefin tuna in the EPO for the years 1999 to 2010.

The U.S. west coast catch of bluefin tuna represents a relatively minor component of the overall EPO tuna catch. The number of purse seine vessels that have landed tuna in California averaged 197 annually from 1981 through 1990 but declined to an annual average of 11 from 2001 through 2010. The decline in the number of domestic vessels is correlated in part with the relocation of large cannery operations. Currently, there are no domestic deliveries of raw tuna to canneries in California.

NMFS compared the effects of the bluefin tuna restrictions imposed by this rule to a no action alternative. Under the no action alternative, there would be no change to current regulations, which do not limit U.S. commercial catches of Pacific bluefin tuna in the IATTC Convention Area. Based on recent Pacific bluefin tuna catch data and expected future trends, it is

unlikely that any benefit to U.S. commercial fisheries would be gained from not implementing Resolution C-12-09 because the catch limit is not expected to be reached. However, failing to adopt this rule would result in the United States not satisfying its international obligations as a member of the IATTC. Furthermore, implementing Resolution C-12-09 could benefit the conservation of Pacific bluefin tuna by limiting catches.

Small Entities Compliance Guide

The Compliance Guide for this action is available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>, and is also available from the Regional Administrator, Rodney R. McInnis, NMFS Southwest Regional Office, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 30, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300 continues to read as follows:

Authority: 16 U.S.C. 951-961 et seq.

2. In § 300.24, a new paragraph (u) is added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Target or retain Pacific bluefin tuna in the IATTC Convention Area by any United States vessel engaged in commercial fishing after the dates specified by the Regional Administrator's notification of closure issued under § 300.25 (h).

3. In § 300.25, a new paragraph (h) is added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(h) Bluefin tuna commercial catch limits in the eastern Pacific Ocean. (1) After the dates specified in a notice published by Regional Administrator in the Federal Register, a United States vessel engaged in commercial fishing may not target or retain bluefin tuna in the Convention Area for the remainder of the calendar year. NMFS will publish such a notice prohibiting further targeting and retention of Pacific bluefin tuna on the projected dates for the remainder of 2013 when 3,295 metric tons or more have been harvested in 2013 by the commercial fishing vessels of all IATTC member countries and cooperating non-member countries. This prohibition will not be effective unless and until the annual commercial harvest of Pacific bluefin tuna by the United States fleet has reached 500 metric tons.

(2) [Reserved]

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